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HUMAN RIGHTS QUESTIONS

Allegations regarding infringements of trade union rights: implementation of Economic and Social Council resolution 1989/82, paragraph 9

Note by the Secretary-General

1. At its first regular session of 1989, the Economic and Social Council, in paragraph 9 of its resolution 1989/82 on infringements of trade union rights in South Africa, requested the Secretary-General to persist in his efforts to ensure that the Government of South Africa refer the complaint made by the Congress of South African Trade Unions (COSATU) to the Fact-Finding and Conciliation Commission on Freedom of Association of the International Labour Organisation (E/1989/49).

2. In pursuance of that resolution, the Secretary-General, on 12 February 1990, sought again the consent of the Government of that country with regard to having the allegations referred to the Fact-Finding and Conciliation Commission on Freedom of Association of the International Labour Organisation, as provided for in Council resolution 277 (X) of 17 February 1950.

3. The Secretary-General circulates herewith the reply received from the Government of the Republic of South Africa dated 1 May 1990.

Annex

NOTE VERBALE DATED 1 MAY 1990 FROM THE PERMANENT REPRESENTATIVE OF THE REPUBLIC OF SOUTH AFRICA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

The Permanent Representative of the Republic of South Africa presents his compliments to the Secretary-General of the United Nations and has the honour to refer to the latter's note of 12 February 1990 in regard to the consideration by the Economic and Social Council of a request from the Governing Body of the International Labour Organisation to consider certain allegations of the infringement of Trade Union rights in the Republic of South Africa.

The Secretary-General will recall that in the Permanent Representative's note of 14 February 1989 it was pointed out that the complaint concerned certain amendments to the South African Labour Relations Act (LRA) Number 28 of 1956. The statements made in that Note, to the effect that it was premature to refer the complaint in question to a factfinding and conciliation commission on freedom of association established by the International Labour Office, are still valid.

In the circumstances the South African authorities would propose that the Economic and Social Council recommend to the Director-General of the International Labour Office that he receive a delegation of senior representatives of the South African Government responsible for the administration of the Labour Relations Act, 1956, at his convenience in order that they may inform him directly of the latest developments concerning the act which would enable him to advise the governing body of the status of the COSATU complaint.

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HUMAN RIGHTS QUESTIONS

Allegations regarding infringements of trade union rights: implementation of Economic and Social Council resolution 1989/82, paragraph 9

Note by the Secretary-General

Addendum

The Secretary-General brings to the attention of the Council the note verbale dated 14 May 1990 from the Permanent Representative of the Republic of South Africa to the United Nations addressed to the Secretary-General (see annex).

Annex

NOTE VERBALE DATED 14 MAY 1990 FROM THE PERMANENT REPRESENTATIVE OF THE REPUBLIC OF SOUTH AFRICA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to recall my note verbale dated 1 May 1990 addressed to the Secretary-General regarding the consideration by the Economic and Social Council of a request from the Governing Body of the International Labour Organisation to consider certain allegations of the infringement of trade union rights in the Republic of South Africa.

Additional background to that reply is contained in the copy of a joint news release issued by the South African Minister of Manpower and the Congress of South African Trade Unions/National Congress of Trade Unions (COSATU/NACTU) in respect of discussions on future proposed labour legislation (see appendix). Since the news release, it has been announced that the Employer's Federation SACCOLA and COSATU/NACTU have produced an agreement on interim changes to the Labour Relations Act.

I should be grateful if this letter could be brought to the attention of the Economic and Social Council since the information will doubtless be of value to both the Council and the Governing Body of the International Labour Organisation in their consideration of the proposal that a South African expert delegation discuss the proposed legislation with the International Labour Organisation in Geneva.

READEX FICHE

Appendix

NEWS RELEASE BY THE MINISTER OF MANPOWER AND COSATU/NACTU

The Minister of Manpower, the Congress of South African Trade Unions (COSATU) and the National Congress of Trade Unions (NACTU) had fruitful discussions on future proposed labour legislation.

The parties committed themselves to reaching the broadest possible consensus and consultation on future labour legislation.

The draft agreement negotiated between COSATU/NACTU and SACCOLA will be submitted to the Minister as soon as possible, whereafter the Minister will refer the proposal to the National Manpower Commission (NMC) for its urgent attention.

On receipt of the NMC proposals, the Minister will give this priority attention and endeavour to put it through Parliament in the current session.

On the issue of the public sector, the Minister will be prepared to facilitate a meeting between COSATU/NACTU and the responsible Minister as regards labour legislation.

For agricultural workers, the Minister will convey to the South African Agricultural Union (SAAU) the request by the two union federations for an urgent meeting to discuss labour legislation covering farm workers.

All parties agreed that all workers should have basic worker rights which must be negotiated.

The parties agreed that a further meeting with SACCOLA present should be held to discuss the proposed amendments to the Labour Relations Act.

On the present disputes in the health and prison sectors, the Minister will convey the proposal for direct negotiations between the responsible authorities and the trade unions concerned.

The parties exchanged preliminary views on a range of issues relating to privatization, deregulation, inflation and work-place violence and agreed that these will require further discussion.

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Allegations regarding infringements of trade union rights: implementation of Economic and Social Council resolution 1989/82, paragraph 9

Note by the Secretary-General

Addendum

The Secretary-General brings to the attention of the Council the letter dated 21 May 1990 from the Permanent Representative of the Republic of South Africa to the United Nations addressed to the Secretary-General (see annex).

Annex

LETTER DATED 21 MAY 1990 FROM THE PERMANENT REPRESENTATIVE OF THE REPUBLIC OF SOUTH AFRICA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to recall my letter dated 14 May 1990 regarding the consideration by the Economic and Social Council of a request from the Governing Body of the International Labour Organisation to consider certain allegations of the infringement of trade union rights in the Republic of South Africa.

In that letter Your Excellency was advised of an agreement on interim changes to the Labour Relations Act.

The signed agreement between the South African Employers Consultative Committee on Labour Affairs (SACCOLA), the Congress of South African Trade Unions (COSATU) and the National Council of Trade Unions (NACTU), in which proposals for amendments to the Labour Relations Act are contained, was received by the Minister of Manpower, Mr. E. Louw, on 9 May 1990. During discussions between the Minister and COSATU and NACTU on 15 March 1990 in Cape Town, unanimity was reached on the following:

(a) The agreement to be reached between the parties concerned would be submitted to the Minister during April 1990;

(b) Soon after receipt of this agreement the parties concerned would enter into discussions with the Minister;

(c) Subsequently the agreement between the employers and employees would be referred to the National Manpower Commission (NMC) for consideration and recommendation to the Minister;

(d) The broadest possible consultation in seeking consensus would take place in the proposed amendments;

(e) The Minister would make all reasonable endeavours to put those proposals which are reconcilable with the draft amendment bill through Parliament this session.

The Draft Amendment Bill referred to above related to certain time-limits in the Labour Relations Act, as well as to the accountability of trade unions for compensation in the case of unlawful strikes.

The agreement submitted to the Minister contained alternative proposals to those provided for in the Draft Amendment Bill. They contained, inter alia, the following:

(a) A new definition for an unfair labour practice, omitting the guidelines and fair conduct provisions contained in the existing definition;

(b) New provisions on the termination of services, which would omit the right of parties to regulate the termination of service by agreement;

(c) Legal remedies at the disposal of parties for unfair strikes and lockouts were omitted;

(d) Certain provisions protecting the freedom of association were omitted;

(e) The provisions which curbed unfair sympathy strikes, boycotts and lockouts were omitted;

(f) The protection of national servicemen was omitted;

(g) The right of civil servants to belong to trade unions.

Since these proposals are not reconcilable with the Draft Amendment Bill, they will be referred to the NMC for consideration and recommendation to the Minister now as soon as all other interested parties have been granted the opportunity to comment and submit proposals.

The Minister of Manpower met representatives of SACCOLA, COSATU and NACTU on 18 May 1990 to clarify certain aspects in their agreement. After fruitful talks it was agreed that a Draft Amendment Bill based on the agreement would be published in the Government Gazette on Wednesday, 23 May 1990, for general information and comment.

The parties have committed themselves to taking all reasonable steps to have the agreement translated into legislation as a matter of urgency.

These events and agreements re-emphasize the need for giving careful attention to the request that a South African expert delegation discuss the proposed legislation with the ILO in Geneva and reinforce the contention of the relevant South African authorities that it would be premature to consider referring the original complaint to the Fact-finding and Conciliation Commission on Freedom of Association of the ILO.

I should be grateful if this letter could be circulated as an official document of the Economic and Social Council at its first regular session under agenda item 3.

(Signed) Jeremy B. SHEARAR
Permanent Representative

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GENERAL ASSEMBLY
Item 82 of the preliminary list*
DEVELOPMENT AND INTERNATIONAL
ECONOMIC CO-OPERATION

ECONOMIC AND SOCIAL COUNCIL
First regular session of 1990
Agenda item 5
SOCIAL DEVELOPMENT

Letter dated 15 May 1990 from the Chargé d'affaires a.i. of the Permanent Mission of Albania to the United Nations addressed to the Secretary-General

I have the honour to transmit to you excerpts from the report entitled "On the improvement of the economic mechanism" submitted on behalf of the Council of Ministers by Adil Carcani, Chairman of the Council of Ministers (see annex).

I should be grateful if you would have the text of the present letter and its annex circulated as a document of the General Assembly, under item 82 of the preliminary list, and of the Economic and Social Council, at its first regular session of 1990, under agenda item 5.

(Signed) Genc MLLOJA
Counsellor
Chargé d'affaires a.i.

* A/45/50.

ANNEX

Report of the Chairman of the Council of Ministers of Albania on the improvement of the economic mechanism

The draft laws forwarded to this session, for discussion and approval, determine the main directions and criteria, on the basis of which the relations among the enterprises, power organs in the district and the ministries and other central institutions will be organized and realized. In conformity with these criteria, the enterprise's rights in the field of planning, production and distribution, export-import, labour and salaries, and of using the financial and foreign currency funds created from it, will expand.

In the field of production, the enterprise will be provided, in a concentrated way, with the volume in the value of the industrial commodity product sold. The enterprises turning out important products for the economy, such as oil, chrome, copper, coal, electric energy, textile, sugar, flour and greases, will also be provided in a concentrated way with their quantity in kind.

The introduction of the index of sold industrial commodity products is of great importance and has a profound economic meaning. It responds better to the purpose of our socialist production, the fulfilment of the real needs of the economy and people, barring the road to globalism and the tendency "to produce for the sake of production", although the product remains in stock-rooms and is not available. This would make both the producer and the consumer more concerned with the final ready-made product. Hence, it will enlarge the responsibility of the producer to send the ready-made product to its destination as soon as possible and will also increase the pressure that both he and the purchaser exert on the transport to send it on time, in the quantity and quality set according to the contracts.

In the field of distribution, the obligation to the State will be imposed on the enterprises, which includes the quantity set for export and that to be sent to the other districts, whereas, for the distribution of the other part of the production, the enterprise will decide by itself, in co-operation with the executive committee of the people's council of the district where it operates.

The enterprise, as a rule, will have the right to define by itself the structure of production in kind up to 20 per cent of its productive capacities, which will not be included in the plan and which will be used by the enterprise to augment the fund of commodities for the home market, as well as for export. Hence, new possibilities are created so that, besides the enterprises charged with export, others also will be instigated to produce articles that are in demand by the foreign market.

The enterprise takes on itself the responsibility to procure the necessary raw materials and to ensure the distribution of its produce. In the same manner, when the production of the enterprise exceeds the plan, it may sell these products in small quantity directly in the market, through its own shops. But the enterprises that produce such mass consumer goods as articles made of metal, wood, ceramics and

terracata will themselves fix the whole plan of the structure of their production, according to the possibilities, and they will have to ensure raw materials.

In this way, those enterprises and others of the kind, as well as the agricultural co-operatives, will sell their products freely in the market at prices they themselves will set according to the supply and demand.

The enterprises in the sector of agriculture will be given, in a concentrated way, the value of the final total agricultural production, the quantity of the agricultural and livestock products in kind that they will deliver in a form of obligation for export, as well as in other districts. The agricultural co-operatives will be responsible before the State only for the plan of delivering agricultural and livestock products.

All the agricultural economies, in co-operation with the respective districts, will define themselves the fund of arable land, including the opening of virgin lands, the structure of sowings and yields, the variety and heads of livestock, the volume of production and the level of the fulfilment of their own needs.

Special elements of the independent account management will be extended and applied also in the internal units of the enterprise, such as in factories, workshops, construction sites and sectors, in the foreign trade enterprises and the sectors of art, culture and sports.

The enterprise will be entitled to make supplementary import orders in case it realizes or overfulfils the export plan. The amount of these profits in currency will be defined by the Council of Ministers, according to the peculiarities of the various branches and sectors of the economy. Having these supplementary currency incomes all the enterprises have the possibility, through the respective export-import organisms under the ministries that deal with production, to order supplementary machineries, equipment, special lines and raw materials to be used for the growth of the production of the export goods and the improvement of their quality. This will serve as a new stimulus for all the economic enterprises, agricultural co-operatives and other institutions so as to find out ways to produce goods that are in demand in the foreign market.

Selling and purchasing relations among the enterprises will be co-ordinated through contracts. In order to increase their role in working out and realizing the plan, they should have new elements of mutual obligation, consolidated also with economic sanctions, up to the liquidation of the damage created, as well as with strict measures in case the buyer does not pay in time the obligations, or when one of the parties violates the contract discipline. In this spirit, the Council of Ministers has studied also the further measures to be adopted to strengthen the role of State arbitration in solving the civil juridical disagreements created among the enterprises, institutions and agricultural co-operatives.

As for the labour indexes, the enterprises will have, in a concentrated way, only the fund of payments. They will decide by themselves the number of working people, the labour productivity and the average payment, etc.

Within the planned fund of payments, the enterprise will have the right to employ as many workers as it deems necessary to realize the plan of production. It will no longer be forced to employ workers above its real needs, but neither can it cut the existing number of the workers without guaranteeing them, in co-operation with the executive committee of the district people's council, workplaces in and outside the enterprise. The latter will also enjoy, as up to the present, the right to surpass the fund of payments when it overfulfils to the same extent the plan of production.

As for capital investments, the respective organs will approve only the objects that surpass the fixed value, whereas its competence for the investments under the set limit and above it will increase.

Important changes are made especially in the financial relations of the enterprise with the State budget. It will be charged, in a concentrated manner, with the obligations to the State budget or the centralized State net income, that part of the net income of the enterprise, that is of its profit, which is handed over in the budget, as well as the lowering of the cost. Most of the profit (90 per cent) belongs to the enterprise itself, just as it will utilize also the fund of amortization for the main means and other incomes it ensures, which at present are handed over completely in the State budget.

The self-financing of the enterprise demands also the change of the legislation in utilizing its profit. The draftlaw forwarded envisages that no less than 85 per cent be used for the extended reproduction of the enterprise, financing the fundamental investments and the constructions to augment production, improving technique and technology and increasing the norm for circulating means. In the State budget, 10 per cent will be deposited as a lever of control for the capital funds it is provided for utilization, the rest will be used for the creation of the funds of the material incentives of the working people, the improvement of their working and living conditions and the establishment of the quota for the State security of the property of the enterprise. The enterprise will have the right to accumulate in the bank from year to year its profit and other funds it has created and not yet used, in an accumulative way, and profiting also from the interest rate for the sum it has deposited in the bank.

When the financial means of the enterprise are insufficient to meet the needs of the extended production, they have the right to request and receive from the bank short or long-term credits, because for this enterprise there will be no more inconvertible budgetary financing, as had existed so far. In this way, self-financing of the extended production will increase further the relative independence and the activity of the enterprises themselves with independent account management. The improved mechanism of the management with its own account will also be practised in the enterprises, which are permitted to work, although experiencing losses. In these cases, the loss will be defrayed by the endowment budget for the unit of production in order to provide the enterprise with the necessary incomes for its reproduction.

Unplanned losses of the enterprises because of bad management, increases in cost, poor quality, unjustifiable changes of the structure of production, or the

non-fulfilment of the plan will not be compensated. They will be included in the economic-financial result of these enterprises in the year to come and, in order to compensate them, the Bank will grant credits at higher interest rates. When these losses, irrespective of the measures adopted by the enterprise, the district and the institution, the Bank and the Ministry of Finances, are repeated in the coming year also, sanctions will be applied for such enterprises, beginning with the dismissal of the leading administrative staff of the enterprise, the dissolution and transfer of the staff or even the suspension of its productive activity. In such a case, the State will undertake the employment of workers.

Our society and the working collectives themselves are not interested in the adoption of such extreme measures. Therefore, the enterprises of the State organs and those of the economy in the districts and in the centre and the working collectives should systematically follow-up the situation and the promotion of production and of its effectiveness, should make profound economic-financial analyses to find out the difficulties and problems arising, either of a subjective or objective nature, and to adopt the proper measures to avoid losses or their repetition.

The consolidation of the independence of the self-accountable enterprise accomplishes a more complete harmonization between the economic productive side and the financial one. At the present, the financial side assumes a specific importance for the activity of the enterprise, and becomes more interested as its responsibility is increasing concerning the fulfilment of the plan and the sale of products, the effectiveness of investments and the introduction of the new technology, the change of the structure of production and the improvement of its quality, etc.

The improved mechanism of the independent account management of the enterprise will further enhance the role of the Bank and will expand the sphere of its activity. All this will be manifested especially in the consolidation of the function played by credit, as an economic lever in the extended reproduction of the enterprise, in order to replace the current irreversible budget financing.

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CONSIDERATION OF THE PROVISIONAL AGENDA FOR THE SECOND REGULAR SESSION OF 1990

Note verbale dated 17 May 1990 from the Permanent Representative of the Philippines to the United Nations addressed to the Secretary-General

The Permanent Representative of the Philippines to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honour to request that the Economic and Social Council consider, under the item of the provisional agenda for the second regular session of the Economic and Social Council of 1990, entitled "Report of the United Nations High Commissioner for Refugees", a discussion of the membership of the Executive Committee of the programme of the United Nations High Commissioner for Refugees.

The increasing importance of the need to address the growing Indochinese refugee problem has long been recognized by the United Nations and has led to the convening of the International Conference on Indochinese Refugees at Geneva on 13-15 June 1989. The continued outflow and presence of still larger numbers of refugees in camps around the South-East Asian region continue to pose not only increased humanitarian concerns but also peace and security problems in the region. It is with these concerns that the Association of South-East Asian Nations and their neighbouring countries have actively involved themselves in the international effort to find an immediate, as well as a lasting, solution to the problem. Thus, it is important that these countries, particularly those hosting such camps, be more largely represented in the work of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees. At present, Thailand is the only member of the Executive Committee hosting camps with substantial first-asylum Indochinese refugees.

The request is submitted so that other neighbouring countries, which also host camps with substantial first-asylum Indochinese refugees, such as the Philippines, may participate more directly in the activities and programmes of the High Commissioner.

It is hoped that the Council will recommend enlargement of the membership of the Executive Committee to reflect the importance of the Indochinese refugee problem and the deepening involvement and participation of the Philippines in the search for a lasting solution.